

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 3570—ACQUISITION OF PANAMANIAN SUPPLIES AND SERVICES

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AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7674, Mar. 2, 1990, unless otherwise noted.

3570.000 Scope of part.

This part provides guidance on implementation of Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 as it relates to the preferential acquisition of supplies and services obtainable in the Republic of Panama. (The pertinent Article IX language is set forth at 3525.801-74.)

Subpart 3570.1—Panamanian Preference

3570.101 Determination and definitions.

(a) It has been determined by the Administrator of the Panama Canal Commission that the acquisition of supplies and services obtainable in the Republic of Panama is required under the conditions contemplated by Article IX.

(b) For the purposes of this determination, the following words and terms, as used in Article IX and this part 3570, shall have the meanings stated below:

Comparable in quality and price means the supplies or services (1) must conform to the purchase description, specifications, or statement of work that sets forth the Commission's requirements; and (2) can be acquired at a price equal to or lower than the price for similarly conforming supplies or services obtainable from sources outside the Republic of Panama.

Goods means manufactured or unmanufactured articles, materials and supplies.

Obtainable in the Republic of Panama means the supplies or services can be obtained from sources in the Republic of Panama.

Panamanian origin means goods that are grown, mined, or produced in the Republic of Panama; or in the case of goods which consist in whole or in part of materials from another country, have been substantially transformed by processes performed in the Republic of Panama into new and different articles of commerce with a name, character, or use distinct from that of the article or articles from which they were so transformed.

Supplies, pursuant to the definition in FAR 2.101, means "all property except land or interest in land." Accordingly, the term includes construction.

3570.102 Policy.

(a) When supplies or services can be obtained from sources both within and without the Republic of Panama, and the following conditions exist, preference shall be afforded to those sources within Panama to the maximum extent possible:

(1) The supplies or services can be provided at the time they are required;

(2) The supplies or services are comparable in quality and price to those that can be obtained from sources outside Panama; and

(3) The sources in Panama:

(i) Are determined to be responsible prospective contractors pursuant to FAR subpart 9.1, and

(ii) Can comply in all material respects with the terms and conditions of the acquisition document.

(b) In the comparison of prices with respect to subparagraph (a)(2) of this section, there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance, and handling. The cost of insurance shall be calculated at one percent (1%) of the value of the supplies, or any supplies incidental to services, in the event the contract does not require insurance.

(c) When choosing between goods from sources within Panama that are otherwise equal, preference shall be given to those goods having a larger percentage of components of Panamanian origin.

(d) When conducting an acquisition of supplies or services for which the estimated cost is not expected to exceed the small purchase limitation in FAR part 13, participation may be limited to sources in Panama unless the contracting officer determines that there is no reasonable expectation of obtaining quotations from two or more such sources that:

(1) Will be responsive to the required delivery time, and

(2) Will be comparable in quality and price to supplies or services from sources outside Panama.

(e)(1) In order to conduct an acquisition of supplies or services above the small purchase limitation and limit participation in the acquisition to

sources in Panama, the contracting officer shall:

(i) Prepare and submit a class or an individual determination and findings to the Procurement Executive, and

(ii) Obtain that official's written approval of such determination and findings.

(2) The determination and findings must clearly document that:

(i) An acquisition limited to such sources would result in obtaining supplies or services at the time they are required that would be comparable in quality and price to those obtainable from sources outside Panama, or

(ii) An acquisition from sources outside Panama would be impracticable because of the nature of the acquisition (e.g., a requirements type contract where deliveries must be made within a very short time span by trucks or pipeline from stockpiles or storage facilities located in Panama).